IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 3433 of 1999

Between:

Muddada Krishnamurthy, S/o. late Suryanarayana,
Kalingapatnam, Salt Factory,
Calinga Patnam, Gara Mandalam,Srikakulam District.

..... PETITIONER

AND

1 Superintendent of Salt,
Nowpada, Santhabommali Mandalem,
Srikakulam District.
2 Management of Salt Factory,
Kalingapatnam, Gara Mandalam,
Srikakulam District.
3 Asst. Salt Commissioner, Kakinada,
Pithapuram Road, Kadinada 533 003.
4 Dy. Salt Commissioner,
Madras, Shahi Bhavan, Madras -600 006.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the first respondent in A.S.No.8/94 dt.21.3.1997 and issue an appropriate writ, order or direction particularly one in the nature of Writ of Certiorari and quash the order passed in A.S.No.8/94 and restore the order passed in P.W.No.2/90 and grant all consequential benefits.

Counsel for the Petitioner: MR.A.K.JAYAPRAKASH RAO

Counsel for the Respondents : MR.B.NARASIMHA SARMA, Addl. Central Govt. Standing Counsel.

The Court made the following :

O R D E R :

The petitioner, who has been working as a Sweeper-cum- Water Majdoor with the second respondent herein, filed this Writ Petition, *inter alia,* seeking to assail correctness of the order dated 21.03.1997 passed in appeal at the instance of contesting respondents herein, in A.S. No. 8 of 1994 on the file of the Additional District Judge, Srikakulam allowing the said appeal setting aside the order dated 06.08.1993 passed by the authority under Payment of Wages Act, 1972, in P.W. No. 2 of 1990.

The case of the petitioner is that he joined as Sweeper and that even though the salary was enhanced, the same was not paid to him and therefore, the petitioner had initially filed an application under Section 15 of the Payment of Wages Act, claiming difference of wages. On contest, the Primary Authority allowed the said application. However, on appeal, the Appellate Authority reversed the same only on the ground that since petitioner is a daily wage employee, he can not invoke the provisions of the Payment of Wages Act and the very application is not maintainable.

Considering the submissions made and on perusal of the material, the question which falls for consideration is as to whether daily wage employee can invoke the provisions of the Payment of Wages Act ?

For convenience sake, the relevant extract of Section 2(6) of the Payment of Wages Act, whereunder the term 'Wage' is defined as under:

> "(vi) "Wages" means all remuneration (whether by way of salary, allowances or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes –
>
> a. any remuneration payable under any award or settlement between the parties or order of a Court;

b. any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

c. any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

d. any sum which by reason of termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions but does not provide for the time within which the payment is to be made;

e. any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;

but does not include –

1. any bonus (whether under a scheme or profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

2. the value of any house accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of the State Government;

3. any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

4. any travelling allowance or the value of any travelling concession;

5. any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

6. any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)".

On a bare reading thereof, it does not exclude any daily wage employee. In fact, the expression includes any remuneration, whether it is called as salary, allowance or otherwise in terms of money or capable of being so expressed. It can not be said that the daily wages would not fall out of the definition of “Wages” as contemplated in the Act. Therefore, the finding of the appellate authority is set aside. Since further merits have not gone into, the matter requires to be reconsidered afresh on merits by the appellate authority on other aspects.

Accordingly, the Writ Petition is allowed setting aside the impugned order dated 21.03.1997. The matter is remitted back to the appellate authority for fresh consideration and disposal in accordance with law after giving notice and opportunity to both sides. No costs.

(B.Prakash Rao, J.)

13.12.2004

DRK

Rule Nisi has been made absolute accordingly.

Witness the Hon’ble Sri Devinder Gupta, the Chief Justice

On Monday the thirteenth day of December, Two thousand and four.

……Registrar

/True copy/

Section Officer.

Copy to:

1 Superintendent of Salt, Nowpada, Santhabommali Mandalem,
Srikakulam District.
2 Asst. Salt Commissioner, Kakinada,
Pithapuram Road, Kadinada 533 003.
3 Dy. Salt Commissioner,
Madras, Shahi Bhavan, Madras -600 006.

4 The Management of Salt Factory, Kalingapatnam, Garamandalam,Srikakulam

5 The Additional District Judge, Srikakulam.

6 The Assistant Commissioner of Labour, Srikakulam.

7 Two CD copies.